

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

John Johnson	:	
670 Marshall Road	:	
Glenmoore, PA 19343	:	
v.	:	
	:	
Plaintiff	:	
ER Solutions, Inc.	:	2011-06305
800 SW 39 <sup>th</sup> Street	:	
Renton, WA 98057	:	
and	:	
John Does 1-10	:	
and	:	Jury Trial Demanded
XYZ Corporations	:	
Defendant(s)	:	

**PLAINTIFF’S BRIEF IN RESPONSE TO PLAINTIFF’S ANSWER TO  
DEFENDANT’S MOTION TO DISMISS**

**I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

This is a lawsuit brought under The Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et. seq.* ("FDCPA"). Plaintiff, John Johnson, alleges that sometime in 2011, Defendant, ER Solutions, Inc. ("ER Solutions") "contacted and communicated" with Plaintiff's spouse by telephone about Plaintiff' alleged consumer debt, which ER Solutions was attempting to collect. Plaintiff claims that within the applicable statute of limitations, Defendant(s) contacted Plaintiff's spouseby telephone. Plaintiff' spouse spoke with "an agent, employee or representative of Defendants. Plaintiff and Defendant engaged in a telephone “communication” within the meaning of the FDCPA. During the “communication” Defendant’s agent, employee or representative failed to disclose the

nature of the call or that the call was an attempt to collect a debt, and therefore violated the FDCPA.

This case was originally filed by Plaintiff in Chester County Court of Common Pleas in Pennsylvania. Defendant(s) removed this action to Federal Court. Defendant has filed a Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief can be granted against ER Solutions. In the alternative, ER Solutions further moves under Rule 12(e) for the more definite statement.

## **II. QUESTIONS PRESENTED**

1. Whether, pursuant to Fed.R.Civ.P. 12(b)(6), Plaintiff has failed to state a claim upon which relief can be granted against ER Solutions, Inc.

*Suggested Answer: No.*

2. Whether, in the alternative, and pursuant to Fed.R.Civ.P. 12(e), Plaintiff should be ordered to provide a more definite statement of her claim.

*Suggested Answer: No.*

### **III. LEGAL STANDARD ON A MOTION TO DISMISS**

The Third Circuit has set forth a two-part analysis to be applied by district courts when presented with a 12(b)(6) motion. First, the court must separate the legal elements and factual allegations of the claim, with the well-pleaded facts accepted as true but the legal conclusions disregarded. *Fowler v. UPMC Shadyside*, 578 F.3d 203,210-11 (3d Cir. 2009). Second, the court must determine whether the facts alleged in the complaint demonstrate that the plaintiff has a "plausible claim for relief." *Id.* at 211.

### **IV. LEGAL ARGUMENT AND AUTHORITIES**

Plaintiff's Complaint asserts adequate facts to support his FDCPA claim against Defendant(s). Plaintiff sufficiently plead that the alleged debt which Defendant(s) contacted Plaintiff about was a consumer debt for purposes of the FDCPA.

### **V. CONCLUSION AND RELIEF REQUESTED**

For the above reasons Plaintiff respectfully requests that this Court not dismiss Plaintiffs Complaint. If the Court deems it appropriate, Plaintiff asks that this Honorable Court allow Plaintiff to set forth a more definite statement of her claim pursuant to Rule 12(e).

/s/ Vicki Piontek

11-6-2011

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Vicki Piontek, Esquire  
Attorney for Plaintiff  
951 Allentown Road  
Lansdale, PA 19446  
717-533-7472  
Fax: 866-408-6735  
palaw@justice.com

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Date

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**CERTIFICATE OF SERVICE**

On the 6th day of November, 2011, I served a true and correct copy of the attached brief  
on the following parties at the following addresses.

KAUFMAN DOLOWICH VOLUCK & GONZO LLP  
MICHAEL J. FARRELL, ESQUIRE  
1777 SENTRY PARK WEST, SUITE 301  
BLUE BELL, PENNSYLVANIA 19422

/s/ Vicki Piontek 11-6-2011

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Vicki Piontek, Esquire  
Attorney for Plaintiff  
951 Allentown Road  
Lansdale, PA 19446  
717-533-7472

\_\_\_\_\_  
Date

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palaw@justice.com